IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.586 OF 2006

IN

COMPANY PETITION NO.459 OF 1989

State of Maharashtra
through the Sales Tax Department
STO (D-1204) 7th Floor, Konkan Bhavan
Navi Mumbai - 400 614. .. Applicant.

Versus

Official Liquidator in respect of
M/s.Wester Works Engineers Ltd. .. Respondents.

Ms.Geeta Shastri, A.G.P. for applicant.
Mrs.K.V.Gautam, Dy.O.L. present.

CORAM : Dr.D.Y.CHANDRACHUD, J.

17TH APRIL, 2007.

P.C.:

1. The applicant before the Court is the State of Maharashtra through the Sales Tax Department. A company by the name of M/s.Wester Works Engineers Limited was ordered to be wound up on 6th September, 1996. Assessment

orders under the Bombay Sales Tax Act, 1959 and the Central Sales Tax Act were passed against the erstwhile company for assessment years commencing from 1988-1989 until 1992-1993. Interest and penalty have been levied in pursuance of the assessment orders. The Sales Tax department lodged a claim before the Official Liquidator on 13th December, 1996. By an order dated 12th January, 2006, the Official Liquidator informed the Sales Tax authorities that the claim has been admitted to the extent of Rs.32,30,367/- as against a claim of Rs.58,93,163/-. The claim of the Sales Tax department to interest and penalty has been disallowed.

2. On behalf of the applicants, it has been submitted that under Section 38C of the Bombay Sales Tax Act, the amount of tax, penalty and interest or any other sum payable by a dealer is to be a first charge on the property of the dealer. Section 9(2) of the Central Sales Tax Act empowers the State Sales Tax Authorities to collect and enforce the payment of tax, including any interest or penalty, payable by a dealer under the Act as if the tax or interest or penalty is payable under the sales tax law of the State. Hence it was urged that the sales tax dues stand protected by Section 38C of the State Act read with Section 9(2), of the Central Act and the

State of Maharashtra in relation to these dues is a secured creditor with a first charge on the property of the dealer.

3. The submission that has been urged will have to be accepted having regard to the plain terms of the statutory provisions of the Bombay Sales Tax Act and the Central Sales Tax Act. Under Section 529 (1) (c) of the Companies Act, 1956, Parliament has envisaged that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to -

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent;

4. The security of every secured creditor shall be deemed to be subject to a pari passu charge of the workmen to the extent of the workmen’s portion therein.

5. The effect of Section 38C of the Bombay Sales Tax is that the claim of the Sales Tax Authorities on account of tax, penalty or interest or any other sum payable by a dealer or any other person is to be a first charge on the property of the dealer or person as the case may be. Section 38C provides as follows : -

> **"Liability under this Act to be first charge.**
>
> 38C. Notwithstanding anything contained in any contract to the contrary but subject to any provision regarding first charge in any Central Act for the time being in force, any amount of tax, penalty, interest or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or, as the case may be, person."

6. Similarly, Sec.9(2) of the Central Sales Tax Act provides thus : -

"9. Levy and collection of tax and penalties.

(2) Subject to the provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability

> of a person carrying on business on the transferee of or successor to such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."

7. Section 9(2) of the Central Sales Tax Act creates a deeming fiction by virtue of which the authorities under sales tax legislation prevalent in the State are entitled to collect and enforce payment of tax, including any interest or penalty, payable by a dealer under the Act as if the tax, interest or penalty is leviable under the relevant sales tax law of the State. The deeming fiction must be given full effect in order to effectuate the purpose for which it is created.

8. The chart which has been annexed to the Company

Application amply demonstrates that the claim of the Sales Tax authorities arises out of assessment orders passed in respect of assessment years prior to the order of winding up. The claim for interest and penalty is under those assessment orders and is confined to the period prior to the date of the order of winding up. The Official Liquidator is manifestly in error in disregarding the claim of the Sales Tax authorities as secured creditors despite the provisions of Section 38C of the Bombay Sales Tax Act and Section 9(2) of the Central Sales Tax Act.

9. In the circumstances, the Company Application is made absolute by setting aside the decision of the Official Liquidator to the extent to which it rejects the claim on account of interest and penalty prior to the date of the order of winding up. The Official Liquidator shall re-adjudicate afresh upon the claim of the applicant for the payment of interest and penalty under the provisions of the Bombay Sales Tax Act, 1959 and the Central Salex Tax Act upto the date of the order of winding up and arrive at a fresh decision after furnishing an opportunity of being heard to the applicants with reference to their application. This exercise shall be carried out within a period of three months from which an authenticated copy of this order is made available.

10. The Company Application is accordingly disposed of.